



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 7, 1997

Ms. Sally Henly  
Division Chief  
General Counsel Division  
City of Austin  
Law Department  
P.O. Box 1088  
Austin, Texas 78767-1088

OR97-0496

Dear Ms. Henly:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 104483.

The City of Austin (the "city") received an open records request for the following information:

- 1) Copies of each and every audio recording in which any employee for the City of Austin asked questions about Mike Malone concerning the current investigation of the DOUGHNUT Free Press.
- 2) Access to each and every evening and night shift work rosters for the month of November 1996.

You contend that the requested audio recordings are made confidential under section 143.089(g) of the Local Government Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code.<sup>1</sup> You also contend that the requested work rosters are excepted from required public disclosure under the "law enforcement" exception, section 552.108 of the Government Code. Although you submitted to this office for review a representative sample of the work rosters, you have not submitted a copy of the requested audio recordings. See Gov't Code § 552.301(b).

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<sup>1</sup>Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Pursuant to section 552.303(c) of the Government Code, on February 11, 1997, our office notified you by letter sent via facsimile that you had failed to submit the recordings required by section 552.301(b). We also asked that you submit additional information necessary for this office to make a determination under section 552.301. We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e), failure to comply would result in the legal presumption that the requested information is public information.

You did not provide our office with the information that was requested in our February 11, 1997 notice to you. Therefore, as provided by section 552.303(e), the requested information is presumed to be public and, absent a demonstration that a compelling interest exists for withholding the information, therefore must be released. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982).

We next address whether the requested work rosters are excepted from required public disclosure under section 552.108. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We agree that the representative sample of work rosters you submitted to this office come within the purview of section 552.108 and therefore conclude that these records may be withheld under this section.<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

VDP/RWP/rho

Ref: ID# 104483

Enclosures: Submitted documents

cc: Mr. Mike Malone  
Editor  
Doughnut Free Press  
P.O. Box 126  
Granger, Texas 76530  
(w/o enclosures)